

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

OZONE PROTECTION AMENDMENT BILL 1998

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Environment and Heritage,
Senator the Hon. Robert Hill)

OZONE PROTECTION AMENDMENT BILL 1998

GENERAL OUTLINE

The purpose of the Ozone Protection Amendment Bill 1998 is to amend the *Ozone Protection Act 1989* which enables Australia to fulfil its international obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol). The Bill will improve the operation of the Act's Licensing and Quota systems, and allow more appropriate regulation of ozone depleting substances.

Specifically, the proposed amendments will make the regulation of the importation, manufacture and export of hydrochlorofluorocarbons (HCFCs) and methyl bromide more equitable, operable and effective. The proposed amendments will also give effect to the 1997 Montreal Amendment to the Montreal Protocol relating to the extension of existing trade restrictions.

FINANCIAL IMPACT STATEMENT

This initiative is revenue neutral. The Office of Regulation Review has approved the following Regulation Impact Statements which address Schedule 1, Item 5 (page 3) and Item 7 (page 16) to the Bill. ORR advised Regulation Impact Statements were only required for items 5 and 7 as the other initiatives, while having a direct effect on business, were of a minor or machinery nature that did not substantially alter existing arrangements.

REGULATION IMPACT STATEMENT

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Subject Matter of Draft RIS: *Ozone Protection Act 1989*

Option 2. *Amend the Act to correct the current weakness in the licensing system.*

Amend the Act to clarify that the Minister is not obliged to grant a controlled substances licence to manufacture HCFCs/methyl bromide when granting a licence to import or export HCFCs/methyl bromide.

Background

The *Vienna Convention for the Protection of the Ozone Layer* and the *Montreal Protocol on Substances that Deplete the Ozone Layer* address concerns regarding the adverse impact of certain substances on the ozone layer. Deterioration in the ozone layer is a concern because scientific evidence indicates it has the following effects:

- increased ground-level exposure to ultraviolet radiation
- increased risk of adverse effects on human health, including sunburn, skin cancer, eye damage and suppression of the human immune system from increased exposure to ultraviolet radiation, particularly UV-B
- adverse effects on plant growth, photosynthesis and disease resistance from increased exposure to UV-B
- potentially adverse effects on aquatic ecosystems (the major contributor to the earth's biomass) may be substantial

(Source: WMO/UNEP Scientific Assessment of Ozone Depletion: 1994 and the Common Questions About Ozone)

These effects will be compounded unless this deterioration is halted. The Convention was agreed in March 1985 and has now been ratified by 165 countries including Australia.

To establish a mandatory timetable for the phase out of ozone depleting substances (ODS), the *Montreal Protocol on Substances that Deplete the Ozone Layer* (the Protocol) was finalised in September 1987. Australia ratified the Protocol on 19 May 1989.

The mandatory timetable specifies dates by which Parties must have stabilised, reduced or eliminated their consumption of ODS. Phase out dates for developing countries are later than those for developed countries, to account for the greater capacity of developed countries to introduce ozone-friendly technology. In recognition of this fact, the Multilateral Fund was established under the Protocol in 1991 to support the transfer of ozone-friendly technology to developing countries.

A phase out timetable for the ozone depleting substance hydrochlorofluorocarbon (HCFC) was introduced in the 1990 London Amendment to the Montreal Protocol, the 1992 Copenhagen Amendment amended the Montreal Protocol to set phase out targets for the ODS methyl bromide. Methyl bromide is commonly used as a soil fumigant in horticulture, floriculture, and in quarantine and pre-shipment applications. HCFCs are ozone depleting but have a much lower ozone depleting potential than chlorofluorocarbons (CFCs), and are considered a transitional chemical to aid the phase out of CFCs. They are commonly used as refrigerants, solvents and blowing agents for plastic foam manufacture. Currently, the Montreal Protocol requires all developed countries to cease bulk consumption of methyl bromide and HCFCs by 2005 and 2020 respectively.

In Australia, the *Ozone Protection Act 1989* and its Regulations were enacted to enable the Commonwealth government to fulfil Australia's obligations under the Montreal Protocol. The Act and Regulations control the import, export and manufacture of ODS, including HCFCs and methyl bromide, in Australia by requiring licences for these activities, and by prohibiting the import and manufacture of certain products containing ODS.

In relation to HCFCs and methyl bromide, the Act provides that persons must not import, export or manufacture bulk quantities of HCFCs or methyl bromide without a controlled substances licence issued under the Act for that purpose. There are no controls on the import or manufacture of products containing HCFCs or methyl bromide.

PROBLEM

Scientific evidence, accumulated over more than two decades of study by the international research community, has shown that human-made chemicals are responsible for the observed depletions of the ozone layer over Antarctica and play a major role in global ozone losses and, subsequently, have adverse impacts on the environment.

It is recognised that international cooperation and action is required to reduce, with the object of eliminating, the use of ODS. Such action by Parties to the Protocol is consistent with Principle 21 of the Declaration of the United Nations Conference on the Human Environment, "to ensure that activities within their (States) own jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

Section 13(1) of the *Ozone Protection Act 1989* states:

a person must not manufacture, import or export an HCFC or methyl bromide unless the person holds a controlled substances licence that allows the person to do so.

Section 13A(2) of the *Ozone Protection Act 1989* states that a controlled substances licence allows the licensee to import, export *and* manufacture HCFCs or methyl bromide.

Section 13A(2) is not consistent with section 13(1). Section 13(1) refers to the need for separate consideration of each activity in which the applicant wishes to engage, while section 13(2) obliges the Minister to grant a controlled substances licence for all three activities, import, export and manufacture. This means HCFC and methyl bromide licensees are currently automatically granted authority to manufacture HCFCs or methyl bromide in Australia.

Australia currently imports and exports HCFCs and methyl bromide, however, it does not manufacture either substance. Nevertheless, under the current provisions an HCFC or methyl bromide licence holder would be automatically permitted to establish an HCFC or methyl bromide manufacturing facility. This would operate to the detriment of the Montreal Protocol's determination:

...to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge...

Therefore, as the consumption of HCFCs and methyl bromide is being phased out by all Parties to the Montreal Protocol, the establishment of any manufacturing facilities would be commercially inadvisable and may jeopardise the orderly phase out of HCFCs and methyl bromide in Australia.

OBJECTIVE

As stated above, Australia is a Party to the *Vienna Convention*, the *Montreal Protocol* and its subsequent Amendments and has enacted the *Ozone Protection Act 1989* and its Regulations to enable the Commonwealth government to fulfil Australia's obligations under the Montreal Protocol.

From 1 January 1996, Parties to the Montreal Protocol agreed on the following guidelines to control HCFC use:

Each country should ensure for new applications that:

- a) HCFC use is limited to those applications where other more environmentally suitable alternative substances or technologies are not available;
- b) HCFCs are not used other than for applications currently met by CFCs, HCFCs, halons, carbon tetrachloride and methyl chloroform, except in rare cases for the protection of human life or health; and
- c) HCFCs are selected for use in a manner that minimises ozone depletion in addition to meeting other environmental, safety and economic consideration.

In Australia, HCFC and methyl bromide licenses are subject to conditions requiring licensees to provide data on their quarterly activity under the licence. This data is collected for the purposes of monitoring Australia's phase out of both substances to ensure Australia's annual 'country cap' or total domestic HCFC consumption as determined by the Montreal Protocol is not exceeded, and reporting progress on ODS phase out to the UNEP Ozone Secretariat.

The objective is to facilitate Australia's phase out of HCFCs and methyl bromide by correcting a perceived weakness in an ozone protection measure, namely, the manner of licensing HCFCs and methyl bromide under the *Ozone Protection Act 1989*.

OPTIONS

To date Australia's phase out of HCFCs and methyl bromide has been achieved through the operation of the licensing system administered under the Act and its Regulations. As legislation, the licensing system received whole of government approval prior to its enactment. This mechanism for achieving the aforementioned objective was reinforced at the international level at the Ninth Meeting of the Parties to the Montreal Protocol in September 1997.

At the Meeting, the Protocol was amended to include Article 4B which requires all Parties to establish and implement a system for licensing controlled substance activity, including HCFCs and methyl bromide. Consequently, the only options are:

- Option 1. Status quo.
- Option 2. Amend the Act to correct the current weakness in the licensing system, clarifying that the Minister is not obliged to grant a controlled substances licence to manufacture HCFCs or methyl bromide when granting a licence to import or export either substance.

IMPACT ANALYSIS

Achievements and Current Status of Australia's Phase Out of HCFCs and Methyl Bromide

i. Achievements in Australia's Phase out of HCFCs and Methyl Bromide

Due to their lower ozone depleting potential, HCFCs were introduced as a replacement to chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform.

Australia achieved a total phase out of CFCs, carbon tetrachloride, methyl chloroform and hydrobromofluorocarbons in 1995. Halons were phased out in 1992, a year ahead of Montreal Protocol requirements.

In regard to HCFCs and methyl bromide, Australia froze consumption of HCFCs from 1 January 1996 to 1989 levels and the consumption of methyl bromide from 1 January 1995 to 1991 levels.

ii. Current Status

Under section 24 of the Act, Australia has limited the quantity of HCFCs that may be imported or manufactured to approximately half the 'country

cap' allocated by the Montreal Protocol. In 1996, HCFC licensees remained within the limit set under section 24 of the Act. In 1997 the limit was exceeded by six ozone depleting potential tonnes (that is, metric tonnage multiplied by the ozone depleting potential (ODP) of the substance) triggering a quota system which will commence 1 January 1999.

The quota system will ensure licensed HCFC activity reduces at a rate consistent with the Montreal Protocol phase out timetable, achieving total phase out by 2020.

In anticipation of this phase out target, Environment Australia has discussed the issues emerging from the transition from HCFCs to their non-ozone depleting alternatives with fluorocarbon industry representatives.

A policy reference group will be established, involving representatives from key stakeholders in the fluorocarbon industry, State and Territory Governments and non-government organisations, and will consider the feasibility of regulatory controls on the supply of hydrofluorocarbons (HFCs) and other ozone depleting substance alternatives in Australia.

In regard to the management of Australia's phase out of methyl bromide, the Federal Department of the Environment has developed a *National Methyl Bromide Response Strategy* in consultation with governments, horticultural industry users and research scientists. Implementation of the Strategy will assist Australia to meet the international phase out timetable for methyl bromide with minimal disruption to our horticultural industries.

Groups Affected

- I. Industry:
 - A. HCFC and methyl bromide licensees
 - B. manufacturers of HCFC and methyl bromide-dependent products
 - C. manufacturers of products dependent on non-ODS alternatives to HCFCs and methyl bromide
- II. Government:
 - A. Commonwealth Government:
 1. Environment Australia
- III. Community in general

Costs and Benefits

Option 1. Status Quo

Take no additional action, allowing HCFC and methyl bromide licensees the automatic authority to manufacture HCFCs or methyl bromide.

BENEFITS	
Community & Consumers	<ul style="list-style-type: none"> as the Australian industry limits for HCFCs and methyl bromide are already being met through imports, domestic HCFC or methyl bromide manufacture may create an excess supply of the substances, likely to decrease the price of goods dependent on them. (This is a hypothetical scenario as there are currently no manufacturing facilities or either substance in Australia).
Business	<ul style="list-style-type: none"> in businesses where HCFCs and methyl bromide are a cost of production, a HCFC or methyl bromide surplus which caused a reduction in the price of HCFCs or methyl bromide would be likely to decrease business expenses in the short to medium term (that is, prior to phase out of these substances).
Government	<ul style="list-style-type: none"> automatically granting licensees the authority to manufacture as well as import or export streamlines administration of the licensing system.

COSTS	
Community & Consumers	<ul style="list-style-type: none"> manufacture of HCFCs or methyl bromide in Australia would increase the quantity of these substances in the community, potentially increasing the release of ozone depleting substances into the stratosphere with the consequent health and environmental costs caused by greater exposure to ultraviolet radiation from ozone depletion. A monograph endorsed by the World Health Organization linked the development of skin cancers, suppression of the immune system and the development of photokeratitis and photoconjunctivitis to exposure to ultraviolet radiation. allowing the manufacture of HCFCs may encourage the production of HCFC-dependent equipment, such as domestic refrigerators and air conditioners. This

	<p>equipment will be obsolete in the medium term, imposing an increasing maintenance cost on the consumer as the price of HCFCs rose with their growing scarcity.</p>
Business	<ul style="list-style-type: none"> • as HCFCs and methyl bromide will be phased out in the medium term it is unlikely that the sunk costs of establishing infrastructure for manufacture would be recouped. (Note: there are currently no such manufacturing facilities in Australia. This is largely explained by the fact that the majority of licensees are subsidiaries of international companies and therefore licensees source their substances from their overseas parent company).
Government	<ul style="list-style-type: none"> • as the government is currently without a discretion to assess an application to manufacture HCFCs or methyl bromide independently from applications to import or export, and the industry limits of both substances are already being imported, a licensee may disrupt the orderly phase out of HCFCs or methyl bromide in Australia by commencing manufacture. • owing to Australia's noted leadership in progressing the phase out of ODS, leaving scope for licensees to <i>establish</i> a manufacturing industry in Australia would be likely to reflect poorly on Australia at international fora.

Option 2. *Amend the Act to correct the current weakness in the licensing system.*

Amend the Act to clarify that the Minister is not obliged to grant a controlled substances licence to manufacture HCFCs or methyl bromide when granting a licence to import or export either substance.

BENEFITS	
Community & Consumers	<ul style="list-style-type: none"> • as government would be able to control manufacture of HCFCs and methyl bromide, the quantity of ODS in the community would be minimised in accordance with the Act and Montreal Protocol, leading to resulting environmental and health benefits, namely, the recovery of the ozone layer and avoidance of the

	<p>potential risks associated with increased levels of ultra violet radiation.</p> <ul style="list-style-type: none"> • phase out of the substances under the Protocol will increase the substance's price with consequent increases in the price of HCFC and methyl bromide-dependent goods. Restricting their manufacture would promote the introduction of alternatives, thereby avoiding the price increases associated with ODS-dependent goods. (In regard to HCFCs, while non-HCFC alternatives are a competitive option in some manufacturing sectors, it is likely that retail prices in sectors still engaging in research and development to identify and refine HCFC alternatives would reflect these R&D costs).
Business	<ul style="list-style-type: none"> • as the government would control the entry into the domestic HCFC and methyl bromide manufacturing markets, businesses licensed to import either substance will experience a form of market share protection if no licences to manufacture were granted. • encourages businesses entering the international market for HCFC or methyl bromide alternatives and alternative-dependent goods, allowing them to achieve economies of scale earlier than would be achievable in a scenario of equivalent HCFC or methyl bromide-dependent goods being available at prices depressed by excess HCFC or methyl bromide supply.
Government	<ul style="list-style-type: none"> • the gain in credibility resulting from the correction of a weakness in the national licensing system, particularly given the recent decision of the Parties to the Montreal Protocol, recommending licensing systems as a measure to promote phase out of ODS. • the greater control over licensees' activity would be likely to assist Australia fulfil monitoring and reporting obligations. • brings Act in line with the commercial reality that no HCFC or methyl bromide manufacturing facilities exist in Australia and provides a mechanism through which to ensure the potential impact on the Australian community from the commencement of such activity could be assessed. • corrects an inconsistency in the Act. Currently the Act provides persons must not manufacture, import or export an HCFC or methyl bromide unless the person holds a controlled substances licence, whereas it later provides controlled substances licences allow licensees

	to import, export <i>and</i> manufacture HCFCs or methyl bromide.
	COSTS
Community & Consumers	<ul style="list-style-type: none"> the opportunity to purchase HCFC or methyl bromide-dependent equipment at prices potentially depressed by an excess supply of HCFCs or methyl bromide from domestic manufacture would be foregone if manufacturing applications were refused. The prices would only be depressed in the short term however as the phase out of HCFCs and methyl bromide would increase the price of the input, making any associated goods expensive to maintain.
Business	<ul style="list-style-type: none"> access to the domestic HCFC or methyl bromide manufacturing markets would be at the Minister's discretion whereas currently HCFCs and methyl bromide licensees are automatically granted the authority to manufacture when they apply to import or export HCFCs or methyl bromide.
Government	<ul style="list-style-type: none"> potential increase in administrative costs in separately assessing applications to manufacture HCFCs or methyl bromide.

CONSULTATION

The weakness in the *Ozone Protection Act 1989* licensing system was raised at a meeting of the relevant industry stakeholder groups, namely the HCFC licensees and the Methyl Bromide Consultative Group. Both forums agreed that the phase out of methyl bromide in the short term and HCFCs in the medium term rendered the establishment of HCFC or methyl bromide manufacturing facilities in Australia commercially unattractive, and therefore, Option 2 did not present a concern. Through exchange of correspondence the following Commonwealth departments were provided with a background to the issue and details of Option 2: Health and Family Services, Primary Industries and Energy; Foreign Affairs and Trade; Prime Minister and Cabinet; Australian Quarantine and Inspection Service; Finance and Administration; Treasury; Industry, Science and Tourism. All departments indicated they supported Option 2.

The issue was then discussed at a subsequent ANZECC Ozone Protection Consultative Committee (OPCC). The following State and Territory

agencies, industry, environmental and user groups and members of the OPCC: State and Territory environment departments, Australian Institute of Refrigeration Air-conditioning and Heating (AIRAH), Australian Supermarket Institute, Aerosol Association of Australia, CSIRO Division of Atmospheric Research, Association of Fluorocarbon Consumers And Manufacturers (AFCAM), Department Administrative Services Centre for Environmental Management Halon Bank (DASCEM Halon Bank), Fire Protection Association, Regency TAFE, Plastics & Chemicals Industry Association, Vehicle Air conditioning Specialists Association (VASA), Australian Ship Owners' Association, Motor Vehicle Repairers' Industry Council, Australian Conservation Foundation, Friends of the Earth, Greenpeace, Australian Consumers Association and NRMA. Commonwealth government action to resolve the licensing system weakness was approved by all parties present.

CONCLUSION AND RECOMMENDED OPTION

A *Preferred Option*

Option 2. Amend the Act to correct the current weakness in the licensing system, clarifying that the Minister is not obliged to grant a controlled substances licence to manufacture HCFCs or methyl bromide when granting a licence to import or export HCFCs or methyl bromide.

B *Reasons for Preference*

By providing that the Minister is not obliged to grant a controlled substances licence to manufacture HCFCs or methyl bromide when granting a licence to import or export HCFCs or methyl bromide:

- the legislative provisions concerning HCFC and methyl bromide controlled substances licenses will be consistent throughout the Act. That is, all provisions will refer to controlled substances licenses to manufacture or import or export HCFCs or methyl bromide.
- the community will experience a net benefit through the promotion of an orderly phase out of both substances with the consequent health and environmental benefits stated above.
- business will have the opportunity to gain economies of scale earlier than would have been achievable if the transition to HCFC and methyl bromide alternatives was delayed by an over supply of either substance.
- government will experience the net benefit of furthering its effort to contribute to the international measures to protect the stratospheric ozone layer.

- as there are currently no manufacturing facilities of either substance in Australia, the amendment would ensure that the government has control over whether any such facilities should be established.

C *Reasons for Rejecting Alternate Option*

Option 1. Status quo was rejected for the following reasons:

- the industry limits for HCFCs and methyl bromide are already supplied to the Australian market through imports. Therefore any manufacture of either substance in addition to this amount, would exceed the industry limit, potentially frustrating the stated objective of facilitating Australia's phase out of HCFCs and methyl bromide in accordance with its obligations under the Montreal Protocol.
- increasing the quantity of HCFCs and methyl bromide in the Australian community through domestic manufacture increases the quantity that can be potentially released into the atmosphere and exacerbate the detrimental effects of ozone layer depletion on health and the environment.
- once new and used HCFC-dependent equipment, such as domestic and commercial refrigerators and air conditioners fail to be commercially attractive owing to the increasing cost of HCFCs as phase out progresses, Australia will face issues of disposal of both the products and the HCFCs contained therein. The cost of disposal or maintenance of these products will be exacerbated if supply of HCFCs in Australia is increased through domestic manufacture, granted as a consequence of the Minister being obliged to grant the authority automatically with an application to import or export.

IMPLEMENTATION AND REVIEW

Implementation

Option 2 could be implemented by amendment of the *Ozone Protection Act 1989*, administered by the Ozone Protection Section of Environment Australia. The amendment would merely clarify that the Minister is not obliged to grant a controlled substances licence to manufacture HCFCs or methyl bromide when granting a licence to import or export HCFCs or methyl bromide.

The amendments would grant the Minister the discretion to consider separately activities subject to an application. In the event a licensee wished to commence HCFC or methyl bromide manufacturing in addition to their currently licenced activity, no additional application fee would however be incurred. If successful, their existing licence would merely be amended.

Review

Section 68 of the *Ozone Protection Act 1989* provides the Minister shall, at the end of each financial year, prepare a report on the operation of the Act during that year and cause a copy of the report to be laid before each House of Parliament within 15 sitting days of that House after the presentation of the report is completed. Consequently, the operation of Option 2, as a provision of the *Ozone Protection Act 1989*, would form part of the annual report to the Houses of Parliament.

The *Ozone Protection Act 1989* is subject to a review in 1999–2000 in accordance with the *Competition Principles Agreement*.

REGULATION IMPACT STATEMENT

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Subject Matter of Draft RIS: *Ozone Protection Act 1989*

Option 2. Amend the Act to allow the Minister to impose licence conditions limiting the amount of HCFCs imported or manufactured under a controlled substances licence.

Background

The *Vienna Convention for the Protection of the Ozone Layer* and the *Montreal Protocol on Substances that Deplete the Ozone Layer* address concerns regarding the adverse impact of certain substances on the ozone layer. Deterioration in the ozone layer is a concern because scientific evidence indicates it has the following effects:

- increased ground-level exposure to ultraviolet radiation
- increased risk of adverse effects on human health, including sunburn, skin cancer, eye damage and suppression of the human immune system from increased exposure to ultraviolet radiation, particularly UV-B
- adverse effects on plant growth, photosynthesis and disease resistance from increased exposure to UV-B
- potentially adverse effects on aquatic ecosystems (the major contributor to the earth's biomass) may be substantial

(Source: WMO/UNEP Scientific Assessment of Ozone Depletion: 1994 and the Common Questions About Ozone)

These effects will be compounded unless this deterioration is halted. The Convention was agreed in March 1985 and has now been ratified by 165 countries including Australia.

To establish a mandatory timetable for the phase out of ozone depleting substances (ODS), the *Montreal Protocol on Substances that Deplete the Ozone Layer* (the Protocol) was finalised in September 1987. Australia ratified the Protocol on 19 May 1989.

The mandatory timetable specifies dates by which Parties must have stabilised, reduced or eliminated their consumption of ODS. Phase out dates for developing countries are later than those for developed countries, to account for the greater capacity of developed countries to introduce ozone-friendly technology. In recognition of this fact, the Multilateral Fund was established under the Protocol in 1991 to support the transfer of ozone-friendly technology to developing countries.

A phase out timetable for the ODS hydrochlorofluorocarbon (HCFC) was introduced in the 1990 London Amendment to the Montreal Protocol. Under Article 2F of the Montreal Protocol, from 1 January 1996 the levels of domestic consumption of HCFCs for each Party were frozen at a limit cap based on a formula prescribed in Article 2F. In addition, Article 2F sets out the phase out timetable for HCFCs, by developed countries, as follows: 35% reduction by 2004; 65% reduction by 2010; 90% reduction by 2015; total phase out by 2020 (excluding 0.5% margin till 2030 for servicing existing equipment). Developing countries are to cease their bulk consumption by 2040.

In Australia, the *Ozone Protection Act 1989* (the Act) and its Regulations were enacted to enable the Commonwealth government to fulfil Australia's obligations under the Montreal Protocol. The Act and Regulations control the import, export and manufacture of ODS, including HCFCs, in Australia by requiring licences for these activities, and by prohibiting the import and manufacture of certain products containing ODS.

Under section 24 of the Act, Australia has limited the quantity of HCFCs that may be imported or manufactured to approximately half the 'country cap' allocated by the Montreal Protocol. In 1996, HCFC licensees remained within the limit set under section 24 of the Act. In 1997 the limit was exceeded by six ozone depleting potential tonnes (that is, metric tonnage multiplied by the ozone depleting potential (ODP) of the substance) triggering the quota mechanism under section 26 of the Act so that the first quota period commences 1 January 1999. In the interim (1 January 1998 - 31 December 1998), licensees are under no restriction as to the quantity of HCFCs they may manufacture or import.

PROBLEM

Scientific evidence, accumulated over more than two decades of study by the international research community, has shown that human-made chemicals are responsible for the observed depletions of the ozone layer over Antarctica and play a major role in global ozone losses, and subsequently, have adverse impacts on the environment.

It is recognised that international cooperation and action is required to reduce, with the object of eliminating, the use of ODS. Such action by Parties to the Protocol is consistent with Principle 21 of the Declaration of the United Nations Conference on the Human Environment, "to ensure that activities within their (States) own jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

Under the Act, HCFCs are the only scheduled ODS for which the Minister may *not* impose a condition restricting the quantity imported, exported or manufactured under a licence issued under the Act. That is, while the Minister may impose limitations on the HCFC activity of the licensed *industry*, the Minister can not restrict the activity of *individual* licensees.

The historical reason for this is that HCFCs are the only controlled substances which, under certain conditions (see explanation of section 26, last paragraph of the Background), become subject to import limitation through a quota system which allocates an import quota to each HCFC licensee. HCFCs were therefore specifically excluded from the provision allowing the Minister to impose licence conditions limiting the quantity of a substance allowed to be imported under a licence.

This exclusion also applies during the year before quotas come into effect, which will occur 1 January 1999. There are two aspects to the problem.

1. *HCFC activity in the interim - until 1 January 1999*

The HCFC import industry (HCFC licensees) has expressed concern that the combination of no import limits in 1998 and the impending quota system could potentially lead to some licensees, acting in their own interests rather than the interests of the industry and the Australian community, importing excessive amounts of HCFCs during 1998 for stockpiling against future restrictions.

To try and prevent this from occurring, HCFC licensees have instructed the Executive Director of the Association of Fluorocarbon Consumers and Manufacturers (AFCAM) to draft a voluntary agreement, to be approved by the Australian Competition and Consumer Commission (ACCC) under which they would agree to limit their 1998 HCFC activity in accordance with the quota formula prescribed by the Act, based on 1997 activity.

They have, however, expressed strong concern that the voluntary agreement alone may not withstand the commercial pressure to import excess quantities in 1998 to stockpile against future phase out restrictions. A breach by one signatory of the voluntary agreement would probably

encourage all licensees to act in their commercial self-interest and follow suit. In the context that Australia has thus far been a world leader in the phase out of ozone depleting substances, such an event would be environmentally and politically significant and may have the potential to breach Australia's obligations under the Montreal Protocol.

As a consequence industry has strongly lobbied Environment Australia for legislative reinforcement of their undertaking.

2. HCFC activity from the commencement of the quota system - 1 January 1999 to phase out

The new quotas will be allocated for a period of two years. Except for the first quota allocation, they will be based on licensees' individual activity in the penultimate calendar year before the start of the following quota period. This means that licensees can influence their quota allocation by importing their entire two year quota in the first year. Thus, to ensure competitors do not gain a greater market share, it would be in the commercial interests of all licensees to attempt to import all their quota in the first year of each quota period. Industry has expressed concern that this may cause an irregular cyclical pattern of market activity which may jeopardise the predictable and certain phase out program for HCFCs. Environment Australia appreciates this concern and acknowledges it may undermine the government's efforts to develop policies and programs for assisting industry introduce alternatives to HCFCs.

OBJECTIVE

As stated above, Australia is a Party to the *Vienna Convention*, the *Montreal Protocol* and its subsequent Amendments and has enacted the *Ozone Protection Act 1989* and its Regulations to enable the Commonwealth government to fulfil Australia's obligations under the Montreal Protocol.

The objective is to facilitate Australia's phase out of HCFCs by correcting a perceived weakness in an ozone protection measure, namely, the licensing system which currently prevents the Minister imposing a licence condition limiting the amount of HCFCs imported or manufactured under a controlled substances licence.

OPTIONS

Australia's phase out of HCFCs is being progressed under the *Ozone Protection Act 1989* through the operation of a licensing and quota system. As legislation, these measures received whole of government approval

prior to their enactment. This mechanism for achieving the Objective was reinforced at the international level at the Ninth Meeting of the Parties to the Montreal Protocol in September 1997.

At the Meeting, the Protocol was amended to include Article 4B which requires all Parties to establish and implement a system for licensing controlled substance activity, including HCFCs.

Consequently, the only options are:

- Option 1. Status quo.
- Option 2. Amend the Act to allow the Minister to impose licence conditions limiting the amount of HCFCs imported or manufactured under a controlled substances licence.

IMPACT ANALYSIS

Achievements and Current Status of Australia's Phase out of HCFCs

i. Achievements in Australia's Phase out of HCFCs

Due to their lower ozone depleting potential, HCFCs were introduced as a replacement to chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform.

Australia achieved a total phase out of CFCs, carbon tetrachloride, methyl chloroform and hydrobromofluorocarbons in 1995. Halons were phased out in 1992, a year ahead of Montreal Protocol requirements.

In regard to HCFCs, from the inception of the Article 2F Montreal Protocol control measures, Australia has pursued an accelerated phase out strategy, freezing consumption of HCFCs from 1 January 1996 to 1989 levels.

ii. Current Status

From 1 January 1999, the manufacture and import of HCFCs licensed under a controlled substances licence will be limited to a quota allocation calculated in accordance with the Act. The quota system will ensure licensed HCFC activity reduces at a rate consistent with the Montreal Protocol phase out timetable, achieving total phase out by 2020. In accordance with Australia's accelerated phase out strategy, the total quantity of HCFC activity allocated in any given quota period will be approximately half Australia's country-limit as calculated under the Montreal Protocol Article 2F formula.

In anticipation of the 2020 phase out target, Environment Australia has discussed the issues emerging from the transition from HCFCs to their

non-ozone depleting alternatives with fluorocarbon industry representatives.

A policy reference group will be established, involving representatives from key stakeholders in the fluorocarbon industry, State and Territory Governments and non-government organisations, and will consider the feasibility of regulatory controls on the supply of hydrofluorocarbons (HFCs) and other ozone depleting substance alternatives in Australia.

Groups Affected

- I. Industry:
 - A. HCFC licensees
 - B. manufacturers of HCFC-dependent products
 - C. manufacturers of products dependent on non-ODS alternatives to HCFCs
- II. Government:
 - A. Commonwealth Government:
 - 1. Environment Australia
- III. Consumers
- IV. Community

Costs and Benefits

Option 1. Status Quo

Take no additional action such that HCFC licensees could import an unlimited quantity in the interim (1 January - 31 December 1998) and, upon commencement of the first quota period, import their quota in an unrestricted manner.

	BENEFITS
Community & Consumers	<ul style="list-style-type: none"> • the potential for wide variation in the availability of HCFC-dependent goods and services (as a result of HCFC licensees importing their entire quota at the commencement of each period) may lead to similar variations in retail prices such that these prices may be depressed early in each period when the market is flooded with HCFC imports.
Business	<ul style="list-style-type: none"> • in the event a business has the necessary storage, maintenance and transportation resources, they would have the opportunity to stockpile HCFCs in 1998 against future reductions in the HCFC industry limit implemented in accordance with the Montreal Protocol. • freedom to import their allocated quota as desired.

	<ul style="list-style-type: none"> potential to capture greater quota allocation by importing their entire quota in the first year of each quota period, owing to the quota calculation formula. Quotas are based on a licensee's HCFC activity in the "penultimate calendar year before the start of the following quota period". (In the event <i>all</i> licensees followed suit, this benefit would not be realised)
Government	<ul style="list-style-type: none"> minor benefit from avoiding the administrative task of adding an additional condition to HCFC licences.

COSTS	
Community & Consumers	<ul style="list-style-type: none"> without a restriction on HCFC imports in 1998, the practice of stockpiling by licensees would increase the quantity of HCFCs in the community, potentially increasing the release of ODS into the stratosphere with the consequent health and environmental costs caused by greater exposure to ultraviolet radiation from ozone depletion. A monograph endorsed by the World Health Organization linked the development of skin cancers, suppression of the immune system and the development of photokeratitis and photoconjunctivitis to exposure to ultraviolet radiation. countering the above mentioned benefit from depressed prices for HCFC-dependent goods and services, prices for these products may increase as a result of increased storage and maintenance costs from bulk importation of quotas.
Business	<ul style="list-style-type: none"> stockpiling HCFCs in 1998 would impose costs associated with the storage and maintenance of such large quantities. in the event that all licensees attempted to import their quota at the commencement of each quota period the increased demand for shipping and general transport resources, storage and maintenance resources would probably increase their cost to business.
Government	<ul style="list-style-type: none"> loss of goodwill between government and the fluorocarbon industry as industry lobbied government strongly for the amendment to the Act. potential loss of international credibility if the fluorocarbon industry's voluntary agreement collapses

	<p>with HCFC licensees importing excess quantities of HCFCs in 1998, potentially breaching Australia's Montreal Protocol limit.</p> <ul style="list-style-type: none"> • owing to Australia's noted leadership in progressing the phase out of ODS, leaving scope for licensees to follow an unpredictable pattern of HCFC importation within the phase out strategy in subsequent quota periods would be likely to reflect poorly on Australia at international fora.
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Option 2. *Amend the Act to allow the Minister to impose licence conditions limiting the amount of HCFCs imported or manufactured under a controlled substances licence.*

BENEFITS	
Community & Consumers	<ul style="list-style-type: none"> • controlling the entry of HCFC imports on to the domestic market would avoid the environmental and health risks associated with licensees stockpiling HCFCs in the interim year (1998). The amendment would facilitate the smooth phase out of HCFCs and therefore the recovery of the ozone layer and avoidance of the potential risks associated with increased levels of ultra violet radiation.
Business	<ul style="list-style-type: none"> • addresses concern that the voluntary agreement to restrict licensees' activity in 1998 to 1997 levels may collapse without legislative support. • addresses industry concern that, without the amendment, there may be an irregular or cyclical pattern of market activity, disruptive to trade in HCFCs, the allocation of quotas and forward planning for the phase out of HCFC operations. • predictable phase out of HCFCs would assist licensees moving their activities into the market for alternative substances and products, providing greater certainty for business strategies. • the opportunity to gain economies of scale earlier than would have been achievable if the transition to non-HCFC dependent goods was delayed by an over supply of HCFCs through stockpiling in 1998.
Government	<ul style="list-style-type: none"> • maintains the goodwill that exists between industry and

	<p>government in the area of ozone protection measures, facilitating government's efforts to develop policies and programs for assisting industry introduce alternative to HCFCs in a cost-effective manner.</p> <p>ensures orderly phase out of HCFCs in accordance with the Act and international obligations under the Montreal Protocol.</p>
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COSTS	
Community & Consumers	<ul style="list-style-type: none"> potential benefit of a price reduction in HCFC-dependent goods and services as a consequence of preventing licensees importing their entire quota at the commencement of each quota period would be foregone. (The price reduction would arguably only be depressed in the short term however as the supply of HCFCs and the associated goods and services would decrease as the quota period progressed.)
Business	<ul style="list-style-type: none"> restricts quantity of their quota a licensee may import in any given period. (Note: licensees lobbied the government strongly for the introduction of this amendment).
Government	<ul style="list-style-type: none"> negligible increase in administrative costs from the imposition of an additional condition to HCFC licenses.

CONSULTATION

HCFC licensees were formally advised on 29 January 1998 that the quota system under the *Ozone Protection Act 1989* would commence operation from 1 January 1999 and there would be no restriction on HCFC activity in the interim year of 1998.

At a meeting of Environment Australia and HCFC licensees on 30 January 1998 the licensees informed Environment Australia of their intention to address the absence of regulation in the HCFC market by undertaking a voluntary agreement signed by all licensees restricting licensed HCFC activity to 1997 levels. In addition, they proposed Environment Australia provide legislative support to this agreement by removing the restriction on the Minister's power to impose a licence condition specifying the quantity of HCFCs a licensee may import or manufacture during a licence period.

Through exchange of correspondence the following Commonwealth departments were provided with a background to the proposed amendment: Health and Family Services, Primary Industries and Energy; Foreign Affairs and Trade; Prime Minister and Cabinet; Australian Quarantine and Inspection Service; Finance and Administration; Treasury; Industry, Science and Tourism. All departments indicated they approved such an amendment.

At the April 1998 meeting of the Australian New Zealand Environment and Conservation Council (ANZECC) Ozone Protection Consultative Committee (OPCC) the issue was discussed. The following State and Territory agencies, industry, environmental and user groups are members of the OPCC: State and Territory environment departments, Australian Institute of Refrigeration Air-conditioning and Heating (AIRAH), Australian Supermarket Institute, Aerosol Association of Australia, CSIRO Division of Atmospheric Research, Association of Fluorocarbon Consumers And Manufacturers (AFCAM), Department Administrative Services Centre for Environmental Management Halon Bank (DASCEM Halon Bank), Fire Protection Association, Regency TAFE, Plastics & Chemicals Industry Association, Vehicle Air conditioning Specialists Association (VASA), Australian Ship Owners' Association, Motor Vehicle Repairers' Industry Council, Australian Conservation Foundation, Friends of the Earth, Greenpeace, Australian Consumers Association and NRMA. No parties present raised any concerns in relation to the proposed amendment.

CONCLUSION AND RECOMMENDED OPTION

A Preferred Option

Option 2. Amend the Act to allow the Minister to impose licence conditions limiting the amount of HCFCs imported or manufactured under a controlled substances licence.

B Reasons for Preference

By providing that the Minister may impose a condition on controlled substances licences limiting the amount of HCFCs imported or manufactured under the licence.

- the community will experience a net benefit through the promotion of an orderly phase out of HCFCs with the consequent health and environmental benefits stated above.
- business will have the opportunity to gain economies of scale earlier than would have been achievable if the transition to non-HCFC dependent goods was delayed by an over supply of HCFCs through stockpiling in 1998. (add to costs and benefits table)

- the fluorocarbon industry's concerns at the absence of supportive regulation would be addressed, maintaining goodwill between the fluorocarbon industry and government and facilitating the government's efforts to develop policies and programs for assisting industry introduce alternatives to HCFCs in a cost-effective and environmentally responsible manner.
- government will experience the net benefit of furthering its efforts to contribute to the international measures to protect the stratospheric ozone layer.

C *Reasons for Rejecting Alternate Option*

Option 1. Status quo was rejected for the following reasons:

- increasing the quantity of HCFCs in the Australian community through allowing stockpiling in 1998 and mass importation in subsequent quota periods increases the quantity that can be potentially released into the atmosphere and exacerbate the detrimental effects of ozone layer depletion on human health and the environment.
- industry concerns would not be addressed, potentially damaging the goodwill previously established between government and the fluorocarbon industry through their cooperative approach to ozone protection measures. This may, in turn, harm efforts to ensure Australia achieves an efficient and effective transition to non-ozone depleting alternative substances.
- owing to Australia's noted leadership in progressing the phase out of ODS, leaving scope for licensees to follow an unpredictable pattern of HCFC importation within the phase out strategy in subsequent quota periods would be likely to reflect poorly on Australia at international fora.

IMPLEMENTATION AND REVIEW

Implementation

It is proposed that Option 2 could be implemented by amendment of the *Ozone Protection Act 1989*, administered by the Ozone Protection Section of Environment Australia. The amendment would remove the restriction preventing the Minister imposing a condition limiting the quantity of HCFCs a licensee may import or manufacture under a controlled substances licence in a given licence period.

Review

Section 68 of the *Ozone Protection Act 1989* provides the Minister shall, at the end of each financial year, prepare a report on the operation of the Act during that year and cause a copy of the report to be laid before each House of Parliament within 15 sitting days of that House after the presentation of the report is completed. Consequently, the operation of Option 2, as a provision of the *Ozone Protection Act 1989*, would form part of the annual report to the Houses of Parliament.

The *Ozone Protection Act 1989* is subject to a review in 1999–2000 in accordance with the *Competition Principles Agreement*.

NOTES ON CLAUSES

Clause 1 - Short Title

1. This clause provides for the amending Bill to be cited as the *Ozone Protection Amendment Act 1998*.

Clause 2 - Commencement

2. This clause provides that the amending Bill will commence operation on the day it receives Royal Assent.

Clause 3 - Schedule(s)

3. This clause provides for the amendment of the *Ozone Protection Act 1989* as set out in the Schedule.

SCHEDULE 1 - AMENDMENT OF THE OZONE PROTECTION ACT 1989

Item 1 - Subsection 7(1) (definition of *controlled substances licence*)

This item substitutes a new definition of the words "controlled substances licence" to apply to the activities authorised under proposed subsection 13A(2) rather than section 16(3). The effect of new definition is to separate the processes of manufacture, importation and export of controlled substances for controlled substances licensing purposes. This is consequential to Item 5.

Item 2 - Subsection 7(1) (definition of *essential uses licence*)

This item substitutes a new definition of the words "essential uses licence" to include reference to subsection 13A(3), which clearly specifies the separate activities of manufacture, export or importation in relation to specified substances which an essential uses licensee may be authorised to engage.

Item 3 - Subsection 7(1) (definition of *Protocol*)

This item amends the definition of the word "Protocol" to include the text of the adjustments agreed at the Seventh Meeting of the Parties in Vienna, 7 December 1995, and the text of the adjustments and amendments agreed at the Ninth Meeting of the Parties in Montreal, 17 September 1997. This is consequential to Item 12.

Item 4 - Subsection 7(1) (definition of *used substances licence*)

This item amends the definition of the words “used substances licence” to include a reference to subsection 13A(4), which specifies the separate activities being import or export, in which a used substances licensee may be authorised to engage.

Item 5 - Subsection 13A(2)

This item substitutes a new subsection 13A(2). It defines the activities in which a “controlled substances licence” may authorise the licensee to engage. The new subsection enables any of the activities of importation, export or manufacture of hydrochlorofluorocarbons (HCFCs) or methyl bromide to be specified in a controlled substances licence. This clarifies the intention of the provision and will resolve an unintended inconsistency in the definition of “controlled substances licence” under subsection 13A(2) with the reference to “controlled substances licence” in subsection 13(1).

Subsection 13(1) provides “a person must not manufacture, import *or* export an HCFC or methyl bromide unless the person holds a controlled substances licence that allows the person to do so”, while subsection 13A(2) currently states that a controlled substances licence allows the licensee to import, export *and* manufacture HCFCs or methyl bromide.

The proposed subsection clarifies that, in assessing an application for a “controlled substances licence”, separate consideration may be given to each activity in which an applicant seeks to engage. This will have the effect of ensuring the Minister is not obliged to grant a “controlled substances licence” to manufacture HCFCs or methyl bromide when granting such a licence to import or export HCFCs or methyl bromide.

Items 6, 8, 9 - Subsection 18(1), Section 23 (definition of *licence*), Section 23 (definition of *licensee*)

These items amend references to “controlled substances licence” as consequential amendments consistent with subsection 13A(2) inserted by Item 5.

Item 7 - Paragraph 18(6)(a)

This item amends the conditions which the Minister may impose on licences granted under the Act, allowing the Minister to impose a licence condition which limits the quantity of HCFCs imported or manufactured under a “controlled substances licence”. This is to facilitate administration of licences by allowing quantity limits to be calculated and specified on an annual basis, while maintaining a licence issue period to be effective for up to two years overall.

Existing paragraph 18(6)(a) effectively excludes HCFCs as the only substance regulated by the Act upon which the Minister may not impose a condition restricting the quantity imported, exported or manufactured under a licence granted under the Act.

The HCFC quota system under the Act will commence from 1 January 1999. From this date, HCFC controlled substances licensees must seek a quota allocation to engage in regulated HCFC activity (ie import or manufacture). Except for the first quota allocation, quotas will be calculated by reference to a licensee's activity in the penultimate calendar year before the start of the following quota period, and quotas will be allocated for a period of two years.

The proposed amendment enables annual entitlements to be prescribed. This will ensure Australia's HCFC controls remain equitable and efficient by avoiding possible distortion in the calculation of future quota allocations, for example if a disproportionate amount of a total quota allocation is imported in the first year of the quota period.

Item 10 - Sections 42 and 43

This item repeals section 42 and 43 of the Act. During the development of the Bill, the Commonwealth Attorney-General's Department identified an area of duplication in the Act, arising from its historical development which reflects Australia's changing international obligations.

The ratification by Australia of the Montreal Amendment to the Montreal Protocol which the Parties adopted at their ninth meeting in 1997 to ban trade in methyl bromide with non-Protocol countries, means methyl bromide is now more effectively covered by the existing provisions in subsections 18(2) and (3), rather than in sections 42 and 43, which are to be repealed. Subsections 18(2) and 18(3) provide that it is a condition of a licence granted under the Act that scheduled substances, including methyl bromide, are not to be imported to or exported from a non-Protocol country. Breach of the licence condition without reasonable excuse, is an offence with a maximum penalty of 500 penalty units currently \$55,000.

Item 11 - After paragraph 67A(1)(a)

This item inserts a new provision in paragraph 67A(1)(a) to allow the Minister to delegate his power to request further information, in relation to a licence application, to a person holding or performing the duties of a Senior Executive Service officer in the Department of Environment and Heritage. This will further streamline current administrative arrangements and shorten the processing time for licence applications.

Item 12 - Schedule 3

This item inserts two new schedules after Schedule 3 of the Act following the consolidated text of the Montreal Protocol on Substances that Deplete the Ozone Layer up to 25 November 1992, to add text as subsequently agreed by the Parties to the Montreal Protocol. Schedule 3A sets out the text of the adjustments agreed at the Seventh Meeting of the Parties in Vienna, 7 December 1995. Schedule 3B sets out the text of the adjustments and amendments agreed at the Ninth Meeting of the Parties in Montreal, 17 September 1997.

Item 13 - Subclause 10(2) of Schedule 4

This item amends subclause 10(2) of the Schedule 4 of the Act which deals with the exemption from the prohibition on manufacturing or importing chlorofluorocarbon (CFC)-dependent refrigeration or air conditioning equipment. The amendment specifies that the exemption only applies to the import of the CFC-dependent refrigerated transport containers, not their manufacture. This clarifies the intention of the exemption to allow the ongoing use of existing CFC-dependent refrigerated transport containers which, by their nature are continually imported and exported, but not to authorise the manufacture of *new* CFC-dependent containers.